IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

I.T.R. Nos.354 of 1995
Date of decision: 05.12.2006

Commissioner of Income Tax (Central), Ludhiana.

---Applicant

Vs.

Highway Cycle Industries Ltd., Ludhiana.

-----Respondent

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE RAJESH BINDAL

Present: Mr. S.K. Garg Narwana, Advocate
for the revenue.

Mr. Akshay Bhan, Advocate
for the assessee.

ORDER:

Following questions of law have been referred for opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh, arising out of its order dated 26.10.1993 in I.T.A. No.207.Chandi/89 in respect of assessment year 1984-85:-

> "1. Whether, on the facts and in the circumstances of the case, the ITAT was right in law in holding that the first proviso to section 43B inserted by the Finance Act, 1987, w.e.f. 1.4.1988 has retrospective application?
>
> 2. Whether, on the facts and in the circumstances of the case, the ITAT was right in law in holding that if the outstanding on account of Sales-tax, Central Sales-tax has been paid before the due date as defined in the first proviso to section 43B, the amount cannot be disallowed u/s 43B even when the 'evidence' for payment before the due date for filing of return u/s 139(1) was not furnished along with the return of income?"

It is fairly conceded by the learned counsel for the revenue that the issue is covered against the revenue and in favour of the assessee by the judgment of Hon'ble the Supreme Court in ***Allied Motors (P) Limited v. Commissioner of Income Tax*** (1997) 224 ITR 677.

Following the above judgment of the Hon'ble Supreme Court, the issue has been decided against the revenue and in favour of the assessee vide order of this Court dated 5.9.2006 in ITR No.94 of 1996, ***The Commissioner of Income tax (C), Ludhiana v. M/s Avery Cycle Inds. Pvt. Limited, Ludhiana.***.

Accordingly, the question is answered against the revenue and in favour of the assessee.

(ADARSH KUMAR GOEL)
JUDGE

December 05, 2006 **(RAJESH BINDAL)**
ashwani **JUDGE**